



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,977	09/09/2003	Allan Todd Berry	40,730	1304

7590 04/06/2005

Joseph G. Mitchell, Esq.  
4521 Derby Lane  
Smyrna, GA 30082

EXAMINER

PARSLEY, DAVID J

ART UNIT	PAPER NUMBER
----------	--------------

3643

DATE MAILED: 04/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/657,977	<b>Applicant(s)</b> BERRY, ALLAN TODD	
	<b>Examiner</b> David J Parsley	<b>Art Unit</b> 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 January 2005.
- 2a) ☒ This action is **FINAL**.      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 16-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **Detailed Action**

### *Amendment*

1. This office action is in response to applicant's amendment dated 1-20-05 and this action is final.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16, 19-20 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,254,472 to Meyn in view of U.S. Patent Application Publication No. 2003/0065414 to van den Nieuwelaar et al.

Referring to claims 16 and 20, Meyn discloses an apparatus to electronically automate the sorting of chicken feet comprising, a sensing means – at 6-8 and 9-11, for tracking the chicken feet and the associated processed chicken – see figure 3 and columns 4-5, a programmable means – at 17, to track and store information received by the sensing means – see for example columns 4-5, and a communication means – at 14-16, between the sensing means and the programmable means – see for example columns 4-5. Meyn further discloses a flag – at 24-26, attached to a

Art Unit: 3643

shackle – see for example figure 1. Meyn does not disclose at least one inspector reject button. U.S. Patent Application Publication No. 2003/0065414 to van den Nieuwelaar et al. Meyn does not disclose the programmable means receives reject information from an inspector reject button and compares the reject information to the information received from the sensing means. van den Nieuwelaar et al. does disclose the programmable means – at 12, receives reject information from an inspector reject button – at 16, and compares the reject information to the information received from the sensing means – at 8a-8e – see for example paragraph [0081]. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Meyn and add the programmable means receiving information from the inspector reject button of van den Nieuwelaar et al., so as to allow for data on each animal/carcass to be stored for reference or later use.

Referring to claims 19 and 23, Meyn as modified by van den Nieuwelaar et al. further discloses the communication means comprises a data bus communication cable – at 14-16 – see for example columns 3-5 of Meyn.

Claims 16, 18, 20 and 22 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication No. 2003/0139130 to Steffler et al. in view of U.S. Patent Application Publication No. 2003/0065414 to van den Nieuwelaar et al. in view of U.S. Patent No. 3,781,946 to Altenpohl.

Referring to claims 16 and 20, Steffler et al. discloses an apparatus to electronically automate the sorting of chicken feet in the category of edible or inedible, comprising, a sensing means – at 52-56 and/or 62-64 and/or 70-72, for tracking the chicken feet and the associated processed chicken, a programmable means – at 58, to track and store information received by the

Art Unit: 3643

programmable means, and a communication means (inherent) between the sensing means and the programmable means – see for example paragraphs [0033]-[0051]. Steffler et al. does not disclose the programmable means receives reject information from an inspector reject button and compares the reject information to the information received from the sensing means. van den Nieuwelaar et al. does disclose the programmable means – at 12, receives reject information from an inspector reject button – at 16, and compares the reject information to the information received from the sensing means – at 8a-8e – see for example paragraph [0081]. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Steffler et al. and add the programmable means receiving information from the inspector reject button of van den Nieuwelaar et al., so as to allow for data on each animal/carcass to be stored for reference or later use. Steffler et al. as modified by van den Nieuwelaar et al. does not disclose a flag attached to a shackle. Altenpohl does disclose a flag – see proximate 10,14 in figure 1 attached to the shackle – at 10,14. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Steffler et al. as modified by van den Nieuwelaar et al., so as to allow for the shackle to be accurately guided along the conveying path.

Referring to claims 18 and 22, Steffler et al. as modified by van den Nieuwelaar et al. and Altenpohl further discloses the programmable means comprises a programmable logic card – see for example paragraphs [0040]-[0044] of Steffler et al.

Claims 17 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Steffler et al. as modified by van den Nieuwelaar et al. and Altenpohl applied to claims 16 or 20 above, and further in view of U.S. Patent No. 4,150,374 to Brook.

Art Unit: 3643

Referring to claims 17 and 21, Steffler et al. as modified by van den Nieuwelaar et al. and Altenpohl further discloses the sensing means comprises at least one photoelectric sensor – at 62 – see for example paragraph [0051] and at least one other sensor – at 52-56, 64 or 70-72 of Steffler et al. Steffler et al. as modified by van den Nieuwelaar et al. and Altenpohl does not disclose at least one inductive sensor. Brook does disclose at least one inductive sensor – at 15 – see for example column 3 lines 10-17. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Steffler et al. as modified by van den Nieuwelaar et al. and Altenpohl and add the sensing means with at least one inductive sensor of Brook, so as to allow for the location of the trolleys to be automatically determined by the device.

Claims 18 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meyn as modified by van den Nieuwelaar et al. as applied to claims 16 or 20 above, and further in view of Steffler et al. Meyn as modified by van den Nieuwelaar et al. does not disclose the programmable means comprises a programmable logic card. Steffler et al. does disclose the programmable means comprises a programmable logic card – see for example paragraphs [0040]-[0044]. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Meyn as modified by van den Nieuwelaar et al. and add the programmable logic card of Steffler et al., so as to allow for the location of each animal/chicken to be automatically determined by the controls.

Claims 19 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Steffler et al. as modified by van den Nieuwelaar et al. and Altenpohl as applied to claims 16 or 20 above, and further in view of Meyn. Steffler et al. as modified by van den Nieuwelaar et al. and Altenpohl does not disclose the communication means comprises a data bus communication

Art Unit: 3643

cable. Meyn does disclose the communication means comprises a data bus communication cable – at 14-16 – see for example columns 3-5. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Steffler et al. as modified by van den Nieuwelaar et al. and Altenpohl and add the communication means comprising a data bus communication cable of Meyn, so as to allow for the controller to automatically exchange data/information with the sensors.

### ***Response to Amendment***

3. The declaration under 37 CFR 1.132 filed 1-20-05 is insufficient to overcome the rejection of claims 16-23 based upon commercial success as set forth in the last Office action because: it based on opinion and there is no evidence authenticating the statements made in the declaration.

### ***Response to Arguments***

4. Applicant's arguments with respect to claims 16-23 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Art Unit: 3643

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on 9hr compressed.

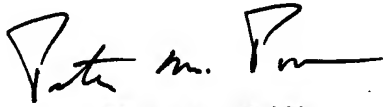
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



Art Unit: 3643

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DP  
David Parsley  
Patent Examiner  
Art Unit 3643

  
PETER M. POON  
SUPERVISORY PATENT EXAMINER  
3/30/05